



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 79**

**[MB Docket No. 12-107; FCC 15-56]**

Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comments on issues related to making emergency information audibly accessible to individuals who are blind or visually impaired. Specifically, the this document seeks comment on: how to prioritize aural emergency information on the secondary audio stream; whether to continue to require school closing information to be included aurally on the secondary audio stream; and whether to require MVPDs to ensure that the devices and applications they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATIONS IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 12-107, by any of the following methods:

- Federal Communications Commission (FCC) Electronic Comment Filing System (ECFS)  
Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- Mail: U.S. Postal Service first-class, Express, and Priority mail must be addressed to the FCC Secretary, Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street SW., Washington, DC 20554. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- Hand or Messenger Delivery: All hand-delivered or messenger-delivered paper filings for the FCC Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> Street SW., Room TW-A325, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530; or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the section IV. “PROCEDURAL MATTERS” heading of the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Evan Baranoff, [Evan.Baranoff@fcc.gov](mailto:Evan.Baranoff@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Second Further Notice of Proposed Rulemaking (Second Further Notice), FCC 15-56, adopted on May 21, 2015, and released on May 28, 2015. For background, see the summary of the Second Report and Order (Second Report and Order) accompanying the Second Further Notice published in this issue of the Federal Register. The full text of this document is available

electronically via the FCC's Electronic Document Management System (EDOCS) Web Site at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/) or via the FCC's Electronic Comment Filing System (ECFS) Web Site at <http://fjallfoss.fcc.gov/ecfs2/>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC, 20554. The complete text may be purchased from the Commission's copy contractor, 445 12<sup>th</sup> Street, SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## **I. INTRODUCTION**

1. In this Second Further Notice of Proposed Rulemaking ("Second Further Notice"), we seek comment on three issues: (i) whether we should adopt rules regarding how covered entities should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time; (ii) whether we should reconsider the Commission's requirement for "school closings and changes in school bus schedules" resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream; and (iii) whether we should require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio

stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services.

## II. DISCUSSION

### A. Prioritization of Emergency Information on the Secondary Audio Stream

2. We seek comment on how video programming providers and video programming distributors should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time.

3. Section 79.2(b)(2)(ii) of the Commission's rules requires that emergency information provided visually during programming that is neither a regularly scheduled newscast, nor a newscast that interrupts regular programming, must be made accessible to individuals who are blind or visually impaired through the use of a secondary audio stream to provide such information aurally.<sup>1</sup> In the First Report and Order, the Commission specified that it would not require a verbatim aural translation of textual emergency information, but that the information presented aurally must accurately and effectively communicate to consumers who are blind or visually impaired the critical details about a current emergency and how to respond to it to the same extent that this information is conveyed textually.<sup>2</sup> In addition, the Commission concluded that if visual but non-textual emergency information is shown during non-newscast programming, the aural description of this information must accurately and effectively convey

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<sup>1</sup> 47 CFR 79.2(b)(2)(ii).

<sup>2</sup> Accessible Emergency Information; Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket Nos. 12-107, 11-43, Report and Order, FCC 13-45, 78 FR 31770, para. 23 (2013) ("First Report and Order"). "Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance." Note to 47 CFR 79.2(a)(2).

the critical details regarding the emergency and how to respond to the emergency.<sup>3</sup>

4. In its recently-filed petition for temporary waiver of the emergency information rules, the National Association of Broadcasters (“NAB”) indicated that “maps and other graphics almost always share the screen with other crawls” and, thus, broadcasters may encounter an issue with how to prioritize these sources of emergency information on the secondary audio stream to “ensur[e] that the most critical audible crawl reaches the public.”<sup>4</sup> We seek comment on this issue. To what extent do broadcasters show more than one crawl or a crawl and a graphic conveying visual emergency information at the same time? In this scenario, do the crawls and graphics being shown simultaneously typically convey information about the same emergency situation?

5. Currently, our rule requires that the critical details about an emergency and how to respond to it must be conveyed aurally on the secondary stream to the same extent that this information is conveyed visually. If more than one crawl or a crawl and a graphic are shown on-screen at the same time, how can covered entities ensure that all of the critical details about the emergency and how to respond are conveyed aurally? Should we adopt rules that provide guidance to covered entities on how to prioritize emergency information conveyed aurally on the secondary audio stream when graphics or multiple crawls are used? For example, should we indicate that certain categories of emergency information should be prioritized based on the severity and proximity of the emergency and the potential impact on life, health, safety, and

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<sup>3</sup> First Report and Order, para. 24 (further noting that, even if a broadcaster employs text-to-speech (“TTS”) technologies, the critical details of emergency information conveyed in a graphic display can be included in the text that will be converted to speech before the TTS conversion takes place).

<sup>4</sup> National Association of Broadcasters, Petition for Temporary Partial Exemption and Limited Waiver, MB Docket No. 12-107, at 10, n.11 (filed Mar. 27, 2015) (“NAB Waiver Petition”). See also id. at 13 (stating that “it is common for broadcasters to run a crawl of school closings, during both newscasts and non-newscast programming” and to also “run a second crawl on the screen during non-newscast programming with [] critical, potentially life-saving information, . . . [b]ut, with currently-available technology, the station would have no way of prioritizing the vital information . . . over the ongoing audible crawl of the school closings”).

property? If multiple critical details about an emergency are broadcast simultaneously, should we prioritize them with respect to the requirement to provide audio information about their content (e.g., if a graphic or one crawl is providing information about areas affected by an emergency while another crawl is providing information about evacuation orders or shelter-in-place instructions), and if so, how? Or are these fact-specific judgements better left for broadcasters to make on a case-by-case basis?

6. Given the time-sensitive nature of emergency information, as well as quick-changing developments that may occur during the course of an emergency situation, should we require that only the highest priority emergency information needs to be conveyed when there are multiple sources of emergency information being shown on-screen at the same time? Or should any prioritization rules assume that all emergency information shown simultaneously must be conveyed aurally and, therefore, require that the highest priority emergency information should be conveyed before any lesser priority emergency information on the secondary audio stream? Should we rely on the good faith judgment of the broadcaster to determine what information qualifies as the highest priority? We seek comment on any other potential solutions or issues related to the prioritization of emergency information on the secondary audio stream, including how determinations of what is a higher or lower priority should be made.

#### **B. Inclusion of School Closing Information on the Secondary Audio Stream**

7. We also seek comment on whether the Commission should reconsider its requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream.

8. “Emergency information” is currently defined in the Commission’s rules as

“[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency,” and examples of the types of emergencies covered include “tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.”<sup>5</sup> In the First Report and Order, the Commission declined to revise this definition of emergency information.<sup>6</sup> In particular, the Commission declined to adopt NAB’s recommendation to delete “school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather” from the examples of emergency information, finding that it would be inappropriate “to narrow the definition in the interest of lessening the impact on other services provided on the secondary audio stream, given the higher priority of emergency information.”<sup>7</sup> Thus, covered entities are required by the rule to ensure that visual emergency information regarding school closings and school bus schedule changes resulting from emergency situations aired during non-newscast programming is conveyed aurally on a secondary audio stream.<sup>8</sup>

9. In its waiver petition, NAB requests a limited waiver of the requirement to

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<sup>5</sup> 47 CFR 79.2(a)(2).

<sup>6</sup> First Report and Order, para. 29.

<sup>7</sup> See id. Although the Commission did not modify the definition of emergency information to delete school closings and school bus schedule changes that result from a current emergency from the list of examples, it found that covered entities have the option to air a brief audio message on the secondary audio stream at the start of the crawl indicating that this information will be aired at the conclusion of video-described programming, and to subsequently provide this information aurally on the secondary audio stream at the conclusion of the video-described programming. Id. at para. 31.

<sup>8</sup> See id. The Commission left it to the good faith judgment of the broadcaster or other covered entity to decide whether school closings and school bus schedule changes result from a situation that is a current emergency based on its severity and potential to threaten life, health, safety, and property and indicated that it would not sanction broadcasters or other covered entities for a reasonable exercise of their judgment in this regard. Id. at para. 31 & n.136. But see NAB Waiver Petition at 11, n.14 (“Rather than risking an investigation and potential fine, however, NAB respectfully submits that most broadcasters would err on the side of caution in determining whether a given school closing falls under the Audible Crawl Rule.”).

include school closings in the audible crawl pending identification of an alternative solution by all interested stakeholders.<sup>9</sup> NAB suggests that this issue should be referred to the Commission’s Disability Advisory Committee’s (“DAC”) Video Programming subcommittee to develop an alternative solution.<sup>10</sup> According to NAB, “an audible crawl of school closings will be prolonged and inefficient” and could last hours, particularly given the vast number of schools typically within a station’s viewing area, as well as the Commission’s requirement that the crawl be repeated.<sup>11</sup> Further, NAB argues that currently there is no way for broadcasters to prioritize “immediately impactful emergency information – such as a hurricane warning – over a prolonged reading of school closings,” and the school closing information could “interfere with the dissemination of more critical emergency information.”<sup>12</sup> NAB also contends that viewers expect emergency information on the secondary audio stream to be “succinct and targeted” since they have to switch from the main program audio to hear it, and that information on school closings is available from other sources, including e-mail, text messages, radio, and Internet websites.<sup>13</sup>

10. We seek comment on NAB’s assertions. Given NAB’s arguments, should the Commission revise its rule to provide that “school closings and changes in school bus schedules” resulting from emergency situations are not required to be conveyed aurally on the secondary audio stream? Or should we revise the rule to indicate that such information must be provided on the secondary audio stream only if no other emergency information is being conveyed audibly

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<sup>9</sup> See NAB Waiver Petition at 11-14.

<sup>10</sup> *Id.* at 11 & n.15.

<sup>11</sup> *Id.* at 12. Section 79.2(b)(2)(ii) of the Commission’s rules requires that emergency information provided aurally on the secondary audio stream be conveyed in full at least twice to ensure that consumers are able to hear all of the information after they switch from the main program audio to the secondary audio stream. See 47 CFR 79.2(b)(2)(ii); *First Report and Order*, para. 25.

<sup>12</sup> NAB Waiver Petition at 12-13.

<sup>13</sup> *Id.* at 13.



on the secondary audio stream at the same time? Should we revise the rule to provide that such information need only be conveyed once in full, rather than twice as currently required, given the potential lengthiness of the crawl? In addition, we seek comment on the benefits of providing information about school closings and changes in school bus schedules on the secondary audio stream for individuals who are blind or visually impaired, and whether the availability of other sources of this information is adequate. Although we seek comment on this issue, we encourage broadcasters and the disability community to work toward a mutually agreeable resolution in the interim through the DAC.<sup>14</sup>

**C. Activation Mechanism for Emergency Information on the Secondary Audio Stream – MVPD Obligations**

11. We seek comment on whether we should require MVPDs to provide their customers with navigation devices that contain a simple and easy to use activation mechanism for accessing emergency information on the secondary audio stream. In the Second Report and Order, we conclude that manufacturers of apparatus covered by -section 79.105 of the Commission’s rules must provide a mechanism that is simple and easy to use, such as one that is reasonably comparable to a button, key, or icon, for activating the secondary audio stream for audible emergency information pursuant to section 203 of the CVAA. Manufacturers must provide this functionality on covered apparatus by December 20, 2016. Although covered apparatus, including navigation devices, will be required to have a simple and easy to use mechanism for activating the secondary audio stream by December 20, 2016, we want to ensure

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<sup>14</sup> We note that since adoption of the Second Report and Order the Media Bureau granted NAB’s request that the Commission temporarily waive the requirement to aurally convey school closing information on the secondary audio stream in the context of the NAB Waiver Petition. See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Petitions for Waiver, MB Docket Nos. 12-107, 11-43; Memorandum Opinion and Order, DA 15-632, para. 18 (MB rel. May 26, 2015).

that compliant devices make it into the hands of MVPD customers promptly. Under section 202 of the CVAA, the Commission has authority to promulgate regulations that require video programming distributors, including MVPDs,<sup>15</sup> “to convey [] emergency information in a manner accessible to individuals who are blind or visually impaired.”<sup>16</sup> We believe this provision gives us authority to require MVPDs to provide devices with a simple and easy to use activation mechanism because conveying audible emergency information on the secondary stream would not be “accessible to individuals who are blind or visually impaired” if those individuals cannot readily access it. We seek comment on that view, as well as whether any other statutory provisions grant the Commission authority to adopt such a requirement. Should MVPDs be required to provide navigation devices with a simple and easy to use activation mechanism for the secondary audio stream only upon request by a customer or should MVPDs be required to provide devices with this functionality to all customers? What time frame would be appropriate for requiring MVPDs to provide navigation devices with a simple and easy to use activation mechanism for the secondary audio stream? We seek comment on these or any other issues related to implementation of such a requirement.

12. In addition, we seek comment on whether we should require MVPDs to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services. In the Second Report and Order, we adopt rules requiring MVPDs to pass through a secondary audio stream containing audible emergency information when they permit consumers to access linear programming on tablets, smartphones, laptops, and similar devices over the MVPD’s network as part of their MVPD services. In

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<sup>15</sup> See 47 CFR 79.1(a)(11).

<sup>16</sup> 47 U.S.C. 613(g)(2).

particular, we conclude that MVPDs must ensure that any application or plug-in that they provide to consumers to access such programming is capable of passing through audible emergency information on a secondary audio stream. Given that the record developed in this proceeding demonstrates that MVPDs control the ability of consumers to select and receive the secondary audio stream for linear programming provided through an MVPD application on mobile and other devices, should we require MVPDs to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information on MVPD applications and plug-ins that allow consumers to view linear programming on mobile and other devices? As noted above, section 202 of the CVAA directs the Commission to promulgate regulations that require video programming distributors, including MVPDs,<sup>17</sup> “to convey [] emergency information in a manner accessible to individuals who are blind or visually impaired.”<sup>18</sup> We believe this provision gives us authority to require MVPDs to provide a simple and easy to use activation mechanism on MVPD applications and plug-ins that allow consumers to view linear programming on mobile and other devices because conveying audible emergency information on the secondary stream would not be “accessible to individuals who are blind or visually impaired” if those individuals cannot readily access it. We seek comment on that view, as well as whether any other statutory provisions grant the Commission authority to adopt such a requirement. What time frame would be appropriate for requiring MVPDs to comply? In the Second Report and Order, we adopt a compliance deadline of two years after publication in the Federal Register for MVPDs to pass through a secondary audio stream with audible emergency information for linear programming on tablets, smartphones, laptops, and similar devices. Should that deadline apply to the requirement for MVPDs to provide a simple and easy to use

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<sup>17</sup> See 47 CFR 79.1(a)(11).

<sup>18</sup> 47 U.S.C. 613(g)(2).

activation mechanism for the secondary audio stream? We seek comment on these or any other issues related to implementation of such a requirement.

### **III. PROCEDURAL MATTERS**

#### **A. Initial Regulatory Flexibility Act**

13. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),<sup>19</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible economic impact on small entities by the policies and rules proposed in the Second Further Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as specified in the Second Further Notice. The Commission will send a copy of the Second Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).<sup>20</sup> In addition, the Second Further Notice and this IRFA (or summaries thereof) will be published in the Federal Register.<sup>21</sup>

#### **1. Need for, and Objectives of, the Proposed Rule Changes**

14. In the Second Further Notice, the Commission seeks comment on three issues: (i) whether to adopt rules regarding how covered entities should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time; (ii) whether to reconsider the Commission’s requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such

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<sup>19</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. 104-121, Title II, 110 Stat. 857 (1996).

<sup>20</sup> See 5 U.S.C. 603(a).

<sup>21</sup> See id.

information and the limits of the secondary audio stream; and (iii) whether to require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services.

## **2. Legal Basis**

15. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

## **3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

16. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted in the Second Report and Order.<sup>22</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>23</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>24</sup> A “small business concern” is one which:

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<sup>22</sup> 5 U.S.C. 603(b)(3).

<sup>23</sup> Id. 601(6).

<sup>24</sup> Id. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>25</sup> Small entities that are directly affected by the rules adopted in the Second Report and Order include video programming providers and video programming distributors covered by section 79.2 of the Commission's rules.

17. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services."<sup>26</sup> In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.<sup>27</sup> Census data for 2007 shows 3,188 firms in this category.<sup>28</sup> Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the

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<sup>25</sup> 15 U.S.C. 632.

<sup>26</sup> U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

<sup>27</sup> 13 CFR 121.201; NAICS Code 517110.

<sup>28</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

18. Cable Companies and Systems. The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>29</sup> Industry data shows that there were 1,141 cable companies at the end of June 2012.<sup>30</sup> Of this total, all but 10 incumbent cable companies are small under this size standard.<sup>31</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>32</sup> Current Commission records show 4,945 cable systems nationwide.<sup>33</sup> Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

19. Cable System Operators (Telecom Act Standard). The Communications Act of

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<sup>29</sup> 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, FCC 95-196, 60 FR 35854 (1995).

<sup>30</sup> NCTA, Industry Data, Number of Cable Operating Companies (June 2012), <http://www.ncta.com/Statistics.aspx> (visited Sept. 28, 2012). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 12-203, Fifteenth Report, FCC 13-99 at para. 24 (rel. July 22, 2013) ("15<sup>th</sup> Annual Competition Report").

<sup>31</sup> See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>. We note that, when applied to an MVPD operator, under this size standard (i.e., 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, MB Docket No. 11-93, Report and Order, FCC 11-182, 77 FR 40276, para. 37 (2011) ("CALM Act Report and Order") (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

<sup>32</sup> 47 CFR 76.901(c).

<sup>33</sup> The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>34</sup> There are approximately 56.4 million incumbent cable video subscribers in the United States today.<sup>35</sup> Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>36</sup> Based on available data, we find that all but 10 incumbent cable operators are small under this size standard.<sup>37</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>38</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

20. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s

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<sup>34</sup> 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1-3.

<sup>35</sup> See NCTA, Industry Data, Cable Video Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

<sup>36</sup> 47 CFR 76.901(f); see Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>37</sup> See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

<sup>38</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to 47 CFR 76.901(f).



broad economic census category, Wired Telecommunications Carriers,<sup>39</sup> which was developed for small wireline businesses. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.<sup>40</sup> Census data for 2007 shows 3,188 firms in this category.<sup>41</sup> Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.<sup>42</sup> Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.<sup>43</sup> Each currently offer subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that

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<sup>39</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>40</sup> 13 CFR 121.201; NAICS Code 517110.

<sup>41</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>42</sup> 13 CFR 121.201; NAICS code 517510 (2002).

<sup>43</sup> See 15<sup>th</sup> Annual Competition Report, at para. 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* para. 27, 110-11.

a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

21. Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs). SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers,<sup>44</sup> which was developed for small wireline businesses. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.<sup>45</sup> Census data for 2007 shows 3,188 firms in this category.<sup>46</sup> Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small.

22. Home Satellite Dish (HSD) Service. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the

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<sup>44</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>45</sup> 13 CFR 121.201; NAICS Code 517110.

<sup>46</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.<sup>47</sup> In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.<sup>48</sup> Census data for 2007 shows 3,188 firms in this category.<sup>49</sup> Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

23. Open Video Services. The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.<sup>50</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators

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<sup>47</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services." U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>48</sup> 13 CFR 121.201; NAICS Code 517110.

<sup>49</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>50</sup> 47 U.S.C. 571(a)(3) through (4). See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 06-189, Thirteenth Annual Report, FCC 07-206, 74 FR 11102, para. 135 (2009) ("Thirteenth Annual Cable Competition Report").

provide subscription services,<sup>51</sup> OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers.<sup>52</sup> In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.<sup>53</sup> Census data for 2007 shows 3,188 firms in this category.<sup>54</sup> Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.<sup>55</sup> Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.<sup>56</sup> The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

24. Wireless cable systems – Broadband Radio Service and Educational Broadband Service. Wireless cable systems use the Broadband Radio Service (BRS)<sup>57</sup> and Educational

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<sup>51</sup> See 47 U.S.C. 573.

<sup>52</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.” U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>53</sup> 13 CFR 121.201; NAICS Code 517110.

<sup>54</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>55</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsцер.html>.

<sup>56</sup> See Thirteenth Annual Cable Competition Report, para. 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

<sup>57</sup> BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). See Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to

Broadband Service (EBS)<sup>58</sup> to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.<sup>59</sup> The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.<sup>60</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.<sup>61</sup> The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a

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Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, FCC 95-230, 60 FR 36524, para. 7 (1995).

<sup>58</sup> EBS was previously referred to as the Instructional Television Fixed Service (ITFS). See id.

<sup>59</sup> 47 CFR 21.961(b)(1).

<sup>60</sup> 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1,500 or fewer employees.

<sup>61</sup> Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, Public Notice, DA 09-1376 (WTB rel. Jun. 26, 2009).

bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.<sup>62</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>63</sup> Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

25. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services."<sup>64</sup> In this category, the SBA

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<sup>62</sup> Id.

<sup>63</sup> Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, Public Notice, DA 09-2378 (WTB rel. Nov. 6, 2009).

<sup>64</sup> U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.<sup>65</sup> Census data for 2007 shows 3,188 firms in this category.<sup>66</sup> Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.<sup>67</sup> The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.<sup>68</sup>

26. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers.<sup>69</sup> In this category, the SBA deems a wired telecommunications

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<sup>65</sup> 13 CFR 121.201; NAICS Code 517110.

<sup>66</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>67</sup> <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

<sup>68</sup> The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4) through (6).

<sup>69</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

carrier to be small if it has 1,500 or fewer employees.<sup>70</sup> Census data for 2007 shows 3,188 firms in this category.<sup>71</sup> Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small.

27. Small Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers in this present RFA analysis. A “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>72</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>73</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

28. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA’s economic census category, Wired

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<sup>70</sup> 13 CFR 121.201; NAICS Code 517110.

<sup>71</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>72</sup> 15 U.S.C. 632.

<sup>73</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 CFR 121.102(b).



Telecommunications Carriers.<sup>74</sup> In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.<sup>75</sup> Census data for 2007 shows 3,188 firms in this category.<sup>76</sup> Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. Therefore, under this size standard, the majority of such businesses can be considered small.

#### **4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

29. In this section, we describe the reporting, recordkeeping, and other compliance requirements proposed in the Second Further Notice and consider whether small entities are affected disproportionately by any such requirements.

30. In the Second Further Notice, the Commission seeks comment on three issues: (i) whether to adopt rules regarding how covered entities should prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time; (ii) whether to reconsider the Commission's requirement for "school closings and changes in school bus schedules" resulting from emergency

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<sup>74</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>75</sup> 13 CFR 121.201; NAICS Code 517110.

<sup>76</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=600&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream; and (iii) whether to require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services.

31. With respect to the first issue, the Second Further Notice asks whether the Commission should adopt rules to provide clarity to covered entities on how to prioritize emergency information on the secondary audio stream when complying with the requirements in Section 79.2. There are no new reporting or recordkeeping requirements proposed. There will, however, be compliance requirements for video programming providers and video programming distributors, including small entities. Specifically, covered entities will need to comply with any rules that govern how to prioritize emergency information conveyed aurally on the secondary audio stream when more than one source of visual emergency information is presented on-screen at the same time.

32. With respect to the second issue, the Second Further Notice seeks comment on whether the Commission should reconsider the requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream, considering the length of such information and the limits of the secondary audio stream. There are no new reporting, recordkeeping, or compliance requirements proposed.

33. With respect to the third issue, the Second Further Notice asks whether the

Commission should require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services. This would impose compliance requirements on MVPDs, including small MVPDs. In addition, there may be reporting or recordkeeping obligations. For example, the Commission may decide to impose a notification requirement so that consumers are aware of the availability of accessible navigation devices that include a simple and easy to use activation mechanism for the secondary audio stream.

## **5. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered**

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>77</sup>

35. Two of the rule changes contemplated by the Second Further Notice would not impose a significant impact on small entities. The Commission is considering a rule that would provide guidance to covered entities on how to prioritize emergency information on the secondary audio stream when there are multiple sources of visual emergency information shown

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<sup>77</sup> 5 U.S.C. 603(c)(1) through (c)(4).

on-screen during non-newscast programming, and the costs and burdens associated with such a rule are expected to be de minimis or non-existent. Further, the Commission is considering whether to reconsider the requirement for “school closings and changes in school bus schedules” resulting from emergency situations to be conveyed aurally on the secondary audio stream. Such a rule change would minimize the costs and burdens on regulated entities of all sizes.

36. The Commission is also seeking comment on whether to require MVPDs to ensure that the navigation devices that they provide to subscribers include a simple and easy to use activation mechanism for accessing audible emergency information on the secondary audio stream, and to provide a simple and easy to use mechanism to activate the secondary audio stream for emergency information when they permit subscribers to view linear programming on mobile and other devices as part of their MVPD services. This proposed rule may have an economic impact in some cases, and that impact may affect small entities. Although the Commission has considered alternatives where possible, as directed by the RFA, to minimize economic impact on small entities, we emphasize that our action is governed by the congressional mandate contained in section 202 of the CVAA.

37. Based on these considerations, we believe that, in proposing additional rules in the Second Further Notice, we have appropriately considered both the interests of blind or visually impaired individuals and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress’ goal to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”<sup>78</sup>

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<sup>78</sup> H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S. Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010).

**6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

38. None.

**B. Paperwork Reduction Act**

39. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).<sup>79</sup> In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.<sup>80</sup>

**C. Ex Parte Rules**

40. We remind interested parties that this proceeding is treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.<sup>81</sup> Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can

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<sup>79</sup> The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

<sup>80</sup> The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

<sup>81</sup> 47 CFR 1.1200 et seq.

be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

#### **D. Filing Requirements**

41. Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>82</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference **MB Docket No. 12-107** and may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies.<sup>83</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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<sup>82</sup> See 47 CFR 1.415, 1419.

<sup>83</sup> See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, Report and Order, FCC 98-56, 63 FR 24121 (1998).

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

42. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to <mailto:fcc504@fcc.gov> or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

43. Availability of Documents. Comments and reply comments will be publically available online via ECFS.<sup>84</sup> These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12<sup>th</sup> Street, SW, Washington, DC 20554. The Reference

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<sup>84</sup> Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

**E. Additional Information**

44. For additional information on this proceeding, contact Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

**IV. ORDERING CLAUSES**

45. Accordingly, **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and the authority found in Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, this Second Further Notice of Proposed Rulemaking **IS ADOPTED**.

46. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Second Further Notice of Proposed Rulemaking in MB Docket No. 12-107, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,

Secretary.

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